

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JASON ALLEN MAGGARD,

Petitioner,

No. CIV S-04-2196 GEB KJM P

VS.

JEANNE S. WOODFORD, et al.,

## Respondents.

## ORDER

Petitioner has requested the appointment of counsel. There currently exists no

absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage of the case “if the interests of justice so require.” See Rule 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does not find that the interests of justice would be served by the appointment of counsel at the present time.

On July 10, 2006, petitioner filed an untimely reply to respondent's opposition to petitioner's motion to stay the proceedings. Local Rule 78-230 (m). The court has considered petitioner's claim that he mailed his exhaustion petition to the wrong address, but does not find it persuasive. First, petitioner has not supported his reply with the various exhibits he purports to rely on to support his claim of inadvertent, rather than intentional, delay. Moreover, although he argues that his appellate attorney refused contact with him after filing a petition for review that

1 did not include the omitted issues, he does not explain why he did not attempt earlier to raise the  
2 issues he then realized had been omitted.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Petitioner's July 10, 2006 motion for appointment of counsel is denied without  
5 prejudice to a renewal of the motion at a later stage of the proceedings; and

6 2. Petitioner's July 10, 2006 late reply to respondent's opposition does not change  
7 the court's findings and recommendations issued July 10, 2006. An additional ten days from the  
8 filed date of this order will be provided for the filing of objections as provided in those findings,  
9 after which the findings will be referred to the district judge assigned to this case.

10 DATED: July 26, 2006.

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13 UNITED STATES MAGISTRATE JUDGE  
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